

# Exhibit 5



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## Publishing - Getting Started in the Music Business

[To Continue](#) | [Back to Section Outline](#) | [Back to Table of Contents](#)

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### What is music publishing?

Music Publishing is the business of exploiting your music through licensing your songs and collecting the royalties. As discussed in the [What are copyrights?](#) section, the owner of copyrighted songs has the exclusive right to perform those songs and to make, sell and distribute copies of the songs. The copyright owner may license others to use any or all of these exclusive rights for a fee. The income generated from granting a license is publishing income, and there are four main types:

- **Performance Income**

Every time your music is played in public, you are owed a fee for the performance of your music. It is impossible for anyone to track every time a song is played in a club or on the radio, so publishers sign up with, or "affiliate with," one of the performance rights societies: BMI (Broadcast Music Incorporated), ASCAP (American Society of Composers, Authors and Publishers) and SESAC. These groups issue performance licenses to radio and television stations, nightclubs, restaurants, and so forth, so that these businesses can play a variety of music. The societies then track and collect the revenues and pay the copyright owners.

- **Mechanical Royalties**

When you issue a license to a record company to manufacture and distribute copies of your songs on vinyl and CDs, the record company will owe you a fixed price per song on each copy sold. This fixed fee is the "mechanical royalty rate," and it can be either negotiated and set in your recording contract, or based on the current statutory rate as fixed by the Copyright Act. The mechanical royalty rate is set by the Compulsory License Provision found in Section 115 of the U.S. Copyright Act; the current statutory mechanical rate is 9.10 Cents for songs 5 minutes or less, or 1.75 Cents per minute or fraction thereof per unit sold - whichever is greater. The Harry Fox Agency, a subsidiary of The National Music Publishers' Association, is available to grant mechanical licenses for its almost 28,000 publisher clients. For more information, contact:

[Harry Fox Agency](#)

711 Third Avenue, Eight Floor, New York, NY 10017  
 (212) 834-0100; fax (212) 953-2384

- **Synchronization Income**

A "synch" license is what you grant to film or television productions to allow them to use your song as an accompaniment to film and TV pictures. There is no standard industry fee for synch licenses. The fees are negotiated and depend on the importance of the particular song and how it is used in the production. In a situation where a popular song is used as the basis of a scene, such as the "Old Time Rock and Roll" scene in "Risky Business," the fee can be in the hundreds of thousands of dollars. For local television commercials and low-budget films, the fees are whatever you can negotiate.

- **Print Income**

These royalties are generated by any publication of your songs in written sheet music or a "folio", which is a book of songs. This category is not a big earner for many artists, but "Greatest Hits" print anthologies published for artists like Joni Mitchell and Led Zeppelin are examples of popular printed music. For each book or sheet sold, the copyright owner of those songs receives a percentage of the retail price.

**NOTE: The TMO has compiled brief summaries of some of the Federal laws pertaining to the music business. Please visit our [appendix](#).**

## What do music publishers do?

A publisher is responsible for "administering the rights" associated with your copyrights, which involves getting your songs played, issuing the appropriate licenses and collecting the money. In the standard arrangement, a songwriter will sign over her copyrights to the publishing company for administration, and in turn the publishing company agrees to pay 50% of all revenues collected to the writer.

The publisher collects mechanical, synchronization, print and foreign release income for the author. The company keeps the "publisher's share" and pays you the "writer's share." The one exception to this arrangement is in the performance income collected by performing rights societies. The societies issue the writer's share directly to you, and issue the publisher its share separately.

## What are performing rights societies?

There are three performing rights societies. ASCAP (American Society of Composers, Authors and Publishers) and BMI (Broadcast Music Incorporated) are the biggest, and they are both non-profit organizations. SESAC, Inc. is the oldest and smallest society. It is privately owned and handles about 1% of published music. These groups issue performance licenses and track the use of music in clubs, on radio and television, in elevators, and anytime a song is heard in public.

Every time one of your songs is played in one of these places, you are owed a fee. Since it is impossible for you to negotiate a license and collect fees from every bar and radio station in the country, you affiliate with one of the societies and authorize them to do it for you. The organizations pay writers and publishers separately, so you should affiliate as a writer to receive the writer's share of your performance royalties. If you plan to do your own publishing, you need to affiliate as both a publisher and a writer with the same society.

Businesses that want to play commercially released music benefit in a parallel way from the performing rights societies. A small bar or college radio station cannot negotiate licenses and pay individual artists for every song they play, so they buy a "blanket license" from ASCAP, BMI and SESAC. For a flat fee, businesses buy the right to play the entire catalogue of songs handled by each society, which together accounts for almost all commercially released music.

The societies collect all the blanket license fees, which add up to the hundreds of millions of dollars each year. The revenue left over after collection expenses are paid for is divided among the members. The societies determine how much airplay songs are getting by tracking radio and television play lists. They pay each member a share based on how many songs he has being played, and how often the songs are played. In effect, a top-ten hit that is played constantly all over the country will get more royalties than songs that are played occasionally on oldies' stations.

## How do I affiliate with ASCAP, BMI and SESAC?

You can affiliate by contacting the societies directly and requesting a writer's packet, a publisher's packet, or both. The packets contain information about the organization, the application kit, a W-9 tax form and the exclusive membership agreement. There are no application fees.

You choose one society and affiliate with it exclusively, so research the societies before you commit yourself. All three have extensive websites for browsing, or contact the organizations and request information. Also ask your friends in the business which group they use, how they are getting paid, and whether they are satisfied with the service. The membership office contact information is as follows:

### **ASCAP**

**New York:** One Lincoln Plaza, New York, NY 10023, (212) 621-6000

**Los Angeles:** 7920 West Sunset Boulevard, Third Floor, Los Angeles, CA 90046, (323) 883-1000

**Nashville:** 2 Music Square West, Nashville, TN 37203 (615) 742-5000

<http://www.ascap.com/about/howjoin.html>

### **BMI**

**New York:** Charlie Feldman, Vice President of Writer/Publisher Relations, 320 West 57th Street, New York, NY 10019, (212) 586-2000

**Los Angeles:** Barbara Cane, Vice President of Writer/Publisher Relations, 8730 Sunset Boulevard, 3rd Floor West, Los Angeles, CA 90069, (310) 659-9109

**Nashville:** Jody Williams, Vice President of Writer/Publisher Relations; or Mark Mason, Director of Writer/Publisher Relations; 10 Music Square East, Nashville, TN 37203, (615) 401-2000

**Texas:** Please refer to contact information listed for Nashville office  
<http://www.bmi.com/>

**SESAC, INC.**  
 55 Music Square East, Nashville, TN 37203, (800) 826-9996  
<http://www.sesac.com/>

## What is SoundExchange?

**SoundExchange** is the first organization designated by the U.S. Copyright Office to collect digital performance royalties for featured recording artists, sound recording copyright owners (SRCOs) and nonfeatured artists when their sound recordings are performed on cable, Internet (noninteractive streaming) and satellite radio.

SoundExchange is an independent nonprofit performance rights organization that currently represents more than 800 record companies, their 3000+ labels and thousands of artists united in receiving a fair price for the licensing of their music in a new digital world. Members include both signed and unsigned recording artists and small, medium and large independent record companies, as well as the major label groups and artist-owned labels. For membership information and a step-by-step guide on how to join, go to <http://www.soundexchange.com/>.

## What is the ISRC?

The **ISRC** (International Standard Recording Code) is the international identification system for sound recordings and music video recordings. The Recording Industry Association of America has been appointed by the International ISRC Agency to oversee the ISRC system within the United States and its territories.

Each ISRC is a unique and permanent identifier for a specific recording which can be permanently encoded into a product as its digital fingerprint. Encoded ISRCs provide the means to automatically identify recordings for royalty payments. ISRCs are widely used in digital commerce by download sites (like iTunes) and royalty collecting societies.

You can apply for an ISRC on their website [here](#). A \$75 one-time fee is required to receive your master (or "company") ISRC code.

Many CD duplicators and digital distributors (like Tunecore and ReverbNation) provide unique ISRCs for each song at no additional cost. Ask your record label, CD duplicator and/or digital distributor if they include ISRCs prior to distributing your music. Some mastering engineers will even embed ISRCs into your masters prior to duplication.

## What is the Harry Fox Agency?

In 1927, the **National Music Publisher's Association** established HFA to act as an information source, clearinghouse and monitoring service for licensing musical copyrights. Since its founding, HFA has become the foremost mechanical licensing, collections, and distribution agency for U.S. music publishers.

HFA issues mechanical licenses for publishers, much like the performing rights societies handle the performance licenses and income. The agency's primary role is issuing mechanical licenses to record companies, online music services, and other licensees, and then collecting and distributing the mechanical royalties. It also performs regular audits on the record labels to make sure the copyright owners are getting paid.

With its current level of publisher representation, HFA licenses the largest percentage of the mechanical and digital uses of music in the United States on CDs, digital services, records, tapes and imported phonorecords.

HFA currently charges 6.75% of the gross royalties it collects as its fee for mechanical royalties. The rest is paid to the publisher, who remits your "writer's share" to you. If you have your own publishing company, you can engage HFA to represent you for your mechanical and synch licenses. Contact the agency at:

### **The Harry Fox Agency/National Music Publishers Association**

**National Music Publishers Association**

101 Constitution Avenue Northwest Suite 705 East, Washington, DC 20001  
 (202) 742-4375; fax (202) 742-4377

### **Harry Fox Agency**

711 Third Avenue, Eighth Floor, New York, NY 10017  
 (212) 834-0100; fax (212) 953-2384

*Harry Fox Agency en Español has answers to frequently asked questions regarding HFA and music licensing, along with a direct email, [esp@harryfox.com](mailto:esp@harryfox.com),*

which goes directly to the company's Latin Licensing agents.  
 Contacto e español:  
 Isabel Mayoral  
 (212) 922-3290

## Should I create my own publishing company or go with an established publisher?

Instead of signing away their copyrights, many artists prefer to create their own publishing entity and either administer the rights themselves or hire someone to do the administration work. This way you keep your copyrights and your publishing monies, but you also have to do much of the work and make the contacts yourself. The toughest part of publishing is tracking and collecting the money, but you can let the industry pros do that for a small percentage of the revenues. You can affiliate your publishing company with ASCAP or BMI for collecting the performance income. For the other major source of publishing income, the mechanical royalties, you can engage the Harry Fox Agency to represent your publishing company.

On the other hand, a good publisher can make you a lot of money by exploiting your songs as thoroughly as possible. Publishers don't make money unless you are making money, so they have a financial stake in your success. They have contacts in the industry, and more clout and experience in negotiating the licensing fees. They can increase your performance income by plugging your songs for radio airplay and getting your songs released in other countries. Publishers can also shop your songs to other artists for "cover recordings," which generate more performance and mechanical royalties. In all, a favorable agreement with a good publisher could be a very lucrative path for exploiting your work. The [appendix](#) includes several resources for researching publishing companies.

## If I am not satisfied with the publisher, can I get my copyrights back?

Possibly. In your publishing agreement, you can ask for a clause called a "reversion" of the rights in your songs if they are not commercially exploited within a specified period of time, such as two years. A "reversion" is a legal term in property law that means you are reserving the right to take your property back if an agreed condition is not met. In this case, if the publisher just sits on your songs for two years and no one is making any money, you can try to get the copyrights back.

If the songs have not been successful, the publisher will probably return the rights to you without argument. Be aware, however, that if the publisher sits on your songs and then you become popular, the publisher may try to keep the songs despite the reversion clause. In this scenario, you'll have to be prepared to sue to get the rights back. The reversion clause in your contract is not an automatic guarantee that you will get your rights back, but it helps prove your case in the event of a dispute.

## How do I set up my own publishing company?

1. Choose a name for your publishing entity and file a "request for publisher name clearance" with the same performing rights society with which you affiliated as a writer. You have to clear a name first because music publishing is a crowded field and many names are already in use. The societies do not want any confusion when handing out the money, so they insist that you clear the name of your company first.
2. When you get a name clearance from the performing rights society, file a DBA with the County Clerk just as you do for the band's name. The checks for the performance money will come addressed to your publishing company, so you will need a DBA to open a bank account in the company's name and cash the checks. See [Do we need to get a business license?](#) for filing information.
3. Get a Tax ID number for the publishing business as well. Follow the instructions for obtaining an Employer Identification Number (EIN) from the section, [Do we pay taxes on the band's income?](#) ASCAP and BMI require that you either include this information when you register with them, or that you are in the process of applying for an EIN because they must keep tax files on all of their members.
4. If you registered the copyrights to your songs in your own name with the Library of Congress, transfer the rights to your new publishing company so that the company will be authorized to administer the rights. The Copyright Office does not take care of the transfer. You transfer your copyrights to the publishing entity by writing out your own contract of transfer and signing it, and then you record the transfer with the Copyright Office. Call the Copyright Office at (202) 707-9100 or check the website at [www.loc.gov/copyright/](http://www.loc.gov/copyright/) to request Circular 12, "Recordation of Transfers and Other Documents." Check the [appendix](#) for resources that provide sample legal forms, like a transfer of copyright. You can use these forms as a model for your own agreement.

## How is music licensed for TV and films?

When a song is used in a television program or on film, it is not only performed, but is also reproduced in film, video, and/or CD digital copies. Because performance and reproduction of copies are among the exclusive rights that come with copyright ownership, the film or television producers must obtain the proper licensing to use a song in an audio-visual production. The licensing of songs for audio-visual formats involves two separate copyrights: (1) the copyright in the underlying musical composition, which is owned by the publisher; and (2) the copyright in the specific recording of the composition, which is owned by the record company. A *synchronization license* (synch license) covers the right to use the composition and a

*master recording license* covers the use of the recording.

Movies are made to be reproduced (as opposed to performed one time only), so filmmakers must obtain both a synch license and a master recording license to use copyrighted music. Commercials and television shows that will be reproduced in syndication also require both licenses. Certain television programs, such as live sports events and awards shows, may use a song with only a performance license from ASCAP, BMI or SESAC, because these programs are one-time performances that are generally not intended for reproduction.

There is no compulsory license (as in mechanical licensing) for synchronization and master recording licensing in audio-visual reproduction. Permission to use the song and the fee are at the discretion of the copyright owners, so an artist/publisher earns whatever he can negotiate for the use of his music on-screen. In television licensing deals, the negotiation issues include the type of media covered by the license (cable TV, network TV, home video, etc), the territory of the license (the U.S., North America, the world) and the term (length) of the license. Because of the greater permanence of movies, film producers will want to buy the rights to use the song in all types of media, throughout the world and in perpetuity, so the price of licensing music for films can be very substantial.

See ASCAP's [Music, Money, Success and the Movies](#) for legal info on music in films. Also available as a [pdf](#).

## How do I get my music into movies, commercials, computer games, and etc.?

1. If you are a Texas resident, request a copy of the Texas Music Office's printout "US Music Supervisors." A music supervisor coordinates most of the music used in a film, including music selection, licensing of rights and recording. Many of the choices made concerning music are predetermined because of the relationship between the motion picture studio and a particular record label. For example, if Sony Pictures releases a film, chances are excellent that the soundtrack will be dominated by Sony Music artists. Don't waste valuable time waiting for a major breakthrough. Work on smaller projects first, network in your local area to build up your credits, and in the long run you'll have an easier time attracting major projects interested in your work. Note: "US Music Supervisors" is not available for mailing outside Texas.

2. Visit the Texas Film Commission's [Production Hotline](#) for a listing of current projects filming in Texas. Mail your promo pack with your CD to the films listed. If you are a composer and interested in scoring a film (as opposed to only providing songs for a soundtrack), please call first. Many times a composer has already been selected. Music is often one of the last decisions made by a director, and although he/she may be filming in Texas, these decisions may be deferred until the production company returns to California.

\*Many independent films do not have the budget to pay for the use of popular hits, and thus are often interested in working with someone who is trying to build up their film music credits for a smaller fee.

### Regional Film Commissions

#### Amarillo Film Office

Jutta Matalka, CTP  
 1000 South Polk, Amarillo, TX 79101  
 (806) 374-1497 ext. 352; (800) 692-1338 ext. 2012  
 Fax (806) 373-3909  
[jutta@amarillo-cvb.org](mailto:jutta@amarillo-cvb.org)

#### Austin Film Office

Gary Bond, Director of Film Marketing  
 201 East Second Street, Austin, TX, 78701  
 (512) 583-7229; (800) 926-2282 ext. 7229  
 Fax (512) 583-7281  
[gbond\[at\]austintexas.org](mailto:gbond[at]austintexas.org)

#### Brownsville Border Film Commission

Peter Goodman, Film Commissioner  
 P.O. Box 911  
 City Hall, Brownsville, Texas 78520  
 (956) 548-6176  
[peter@cob.us](mailto:peter@cob.us)

#### Dallas Film Commission

Janis Burkland, Director  
 City of Dallas, Office of Economic Development  
 1500 Marilla Street, 2C North, Dallas, TX 75201

#### El Paso Film Commission

Susie Gaines, Film Commissioner  
 1 Civic Center Plaza, El Paso, TX 79901  
 (915) 534-0698; (800) 351-6024  
 Fax (915) 534-0687  
[sgaines@elpasocvb.com](mailto:sgaines@elpasocvb.com)

#### Houston Film Commission

Rick Ferguson, Director  
 901 Bagby Street, Suite 100, Houston, TX 77002  
 (713) 437-5248; (800) 365-7575  
 Fax (713) 223-3816  
[rferguson@ghcvb.org](mailto:rferguson@ghcvb.org)

#### San Antonio Film Commission

Drew Mayer-Oakes, Director  
 203 South St. Mary's Street, Suite 200  
 San Antonio, TX 78205  
 (210) 207-6730; (800) 447-3372 ext. 6730  
 Fax (210) 207-6843  
[filmsa@filmsanantonio.com](mailto:filmsa@filmsanantonio.com)

#### South Padre Island Film Commission

Mary K. Hancock, Film Commissioner  
 7355 Padre Blvd., South Padre Island, TX 78597  
 (956) 761-3005; (800) 657-2373 ext. 102  
 Fax (956) 761-3024

(214) 671-9821; Fax (214) 670-4773; Toll Free (877) 817-3456 [maryk@sopadre.com](mailto:maryk@sopadre.com)  
[dallas.film \[at\] dallascityhall.com](mailto:dallas.film[at]dallascityhall.com)

Texas Panhandle Film Commission  
Matt Morgan, Film Commissioner  
P.O. Box 3293  
Amarillo, TX 79116  
(806) 679-1116; (806) 676-8711  
Fax (806) 351-0042  
[info@txpanhandlefilm.com](mailto:info@txpanhandlefilm.com)

3. Research contacts before you send material. Your chances of success are better if the material is suitable for the film subject and is received by the correct person. Send a cover letter emphasizing two things: who you are and how can you help them. Film crews are very busy; be short and to the point. Your packet should include: samples of your work (a CD and an address for your myspace page), a bio, and a list of credits. Make sure materials list your contact information. If you have not received a response, you can make a follow-up call within two weeks to make sure the package was received. It is a good idea to let them know in advance that you plan to make one follow-up call if you don't hear from them. More than one follow-up call usually moves you from the possible file to the nuisance file. If you are researching a production company and not a particular film, always call before you drop by their office. Make sure they are in pre-production before sending a promo packet, otherwise it will end up in a file cabinet.

4. Contact the Radio/Television/Film departments in area colleges for information about film students who may need music for their projects. Also consider checking out the Multimedia Department for students that may need video art music. Art Departments may have some performance art majors in need of music for dramatic and/or choreographic works. Most of these programs have bulletin boards posting announcements and services. Call the department office to ask if you can post a flyer that states your desire to work with students. The TMO can provide you with a list of university, college, community and technical music programs.

5. Some local software/game developer companies contract freelancers for background music. Always call the company before sending unsolicited material and talk to the Audio Director.

6. Examine [the Hollywood Reporter article](#) that surveyed the executive suites of studio music divisions and the growing role of composers in videogames.

7. Download [the latest directory of film and television composers in PDF format](#). This document - courtesy the Hollywood Reporter - includes credits and agency affiliation, plus a complete directory of agencies, clearance companies and studio music divisions. (Requires Acrobat Reader; music businesses start on page 12)

8. The TMO can provide you with a list of advertising agencies, jingles/advertising soundtracks businesses, and radio stations in Texas. As with multimedia companies, call first to establish their status on freelance work. For radio stations, contact the Sales Manager in the Advertising Department for any inquiries.

See ASCAP's [How to Acquire Music For Films](#)  
(frequently asked questions for independent filmmakers)

[Contact the Texas Music Office Accessibility Policy Site Policies Texas.gov TRAIL Search](#)

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